



## **ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice; Proposed New System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Architectural and Transportation Barriers Compliance Board (Access Board or Board) is proposing to establish a new system of records titled, “USAB.001 - Reasonable Accommodation Records.” This system of records covers records related to the administration, adjudication, and implementation of reasonable accommodation requests by agency employees and applicants for employment. The Office of Management and Budget has approved publication of this Notice after expedited review.

**DATES:** This Notice is effective on publication, with the exception of the routine uses. The routine uses will be effective 30 days after publication, unless comments are received that dictate otherwise. Written comments should be submitted [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this notice by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [privacy@access-board.gov](mailto:privacy@access-board.gov).
- Mail: Office of General Counsel, U.S. Access Board, 1331 F Street, NW, Suite 1000, Washington, DC 20004-1111.

*Instructions:* All comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Wendy Marshall, Attorney-Advisor and Privacy Officer, (202) 272-0043, [marshall@access-board.gov](mailto:marshall@access-board.gov).

**SUPPLEMENTARY INFORMATION:** The Access Board is publishing this notice to inform the public of the creation of a new system of records relating to accommodation requests from Access Board employees and applicants. Section 501 of the Rehabilitation Act of 1973 requires federal employers to provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants, unless doing so would cause undue hardship. 29 U.S.C. 791. Similarly, Title VII of the Civil Rights Act of 1964 requires an employer, once on notice, to reasonably accommodate an employee whose sincerely-held religious belief, practice, or observance conflicts with a work requirement, unless providing the accommodation would create an undue hardship. 42 USC 2000e. Reasonable accommodations provide modifications or adjustments to: (1) the job application process; (2) the work environment; and/or (3) the manner in which a position is customarily performed. The proposed records system is necessary to allow the Access Board to collect and maintain records on employees or applicants who request reasonable accommodations based on either disability or sincerely-held religious belief, practice, or observance. Additionally, it will also enable the Board to track and report the processing of accommodation requests agency-wide to comply with applicable laws and regulations.

**SYSTEM NAME:**

USAB.001 - Reasonable Accommodation Records.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

U.S. Access Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004.

**SYSTEM MANAGER:**

Director of Administration, U.S. Access Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 29 U.S.C. 791 et seq.; 42 U.S.C. 12101 et seq.; 42 U.S.C. 2000e et seq.; 42 U.S.C. 2000bb et seq.; 44 U.S.C. 3101; 29 CFR 1605, 1614; Executive Order (E.) 13164 (July 28, 2000); and E.O. 13548 (July 10, 2010).

**PURPOSE(S) OF THE SYSTEM:**

This system of records is intended to support the receipt, review, evaluation of requests made to the Access Board for reasonable accommodations (regardless of type of accommodation), the outcome of such requests, and the implementation of approved accommodations. Additionally, this record system is also intended to track and report the processing of requests for USAB-wide reasonable accommodations to comply with applicable laws and regulations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by this system include prospective, current, and former Access Board employees (including, but not limited to, full-time and part-time employees, temporary hires, interns, and co-op students.) who have requested reasonable accommodations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name and employment information of current or prospective employee needing an accommodation; requester's name and contact information (if different than the employee who needs an accommodation); date request was initiated; information concerning the nature of the disability or religious belief, practice, or observance and the need for accommodation, including appropriate medical or other documentation; occupational series; pay grade; essential duties of the position; details of the accommodation request, such as: type of accommodation requested, how the requested accommodation would assist in job or allow job performance while accommodating the disability or religious belief, practice, or observance; the sources of technical assistance consulted in trying to identify alternative reasonable accommodation; any additional information provided by the requester relating to the processing of the request; whether the request was approved or denied; whether the accommodation was approved for a trial period; and, documentation between the employee and his/her supervisor(s) regarding the accommodation.

**RECORD SOURCE CATEGORIES:**

Subject individuals; individual making the request (if different than the subject individuals); medical and equal employment opportunity professionals; and the subject individuals' supervisor(s).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside the agency may be made as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Law Enforcement – In the event that a system of records maintained by the Access Board to carry out its functions indicates a violation or potential violation of law,

whether criminal, civil, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be disclosed to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. Disclosure When Requesting Information – A record from this system of records may be disclosed to a federal, state, or local agency or to another public or private source maintaining civil, criminal, or other relevant enforcement information or other pertinent information, if and to the extent necessary to obtain information relevant to an Access Board decision concerning the hiring or retention of an employee, personnel security (e.g., suitability/fitness determinations), or the letting of a contract.

3. Disclosure of Existence of Record Information – With the approval of the Access Board Executive Director, the Director of Administration (or his or her designee), the fact that this system of records includes information relevant to a federal agency's decision in connection with the hiring or retention of an employee, personnel security (e.g., suitability, fitness determinations), retention of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit may be disclosed to that federal agency.

4. Disclosure in Litigation – A record from this system of records may be disclosed in a proceeding before a court or other adjudicative body in which the Access Board, an employee of the Access Board in his or her official capacity, or an employee of the Access Board in his or her individual capacity if the Access Board (or the Department of Justice (“DOJ”)) has agreed to represent him or her is a party, or the United States or any other federal agency is a party and the Access Board determines that it has an interest in the proceeding, if the Access Board determines that the record is relevant to the

proceeding and that the use is compatible with the purpose for which the Access Board collected the information.

5. Disclosure to the Department of Justice in Litigation – When the Access Board, an employee of the Access Board in his or her official capacity, or an employee of the Access Board in his or her individual capacity whom the Access Board has agreed to represent is a party to a proceeding before a court or other adjudicative body, or the United States or any other federal agency is a party and the Access Board determines that it has an interest in the proceeding, a record from this system of records may be disclosed to the DOJ if the Access Board is consulting with the DOJ regarding the proceeding or has decided that the DOJ will represent the Access Board, or its interest, in the proceeding and the Access Board determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which the Access Board collected the information.

6. Congressional Inquiries – A record from this system of records may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

7. Disclosure in Response to a Federal Data Breach – A record from this system of records may be disclosed to appropriate agencies, entities, and persons when: (1) the Access Board suspects or has confirmed that there has been a breach of the system of records; (2) the Access Board as determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Board (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Access Board efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Contractors, Experts, and Consultants – To contractors, experts, consultants, and the agents of thereof, and others performing or working on a contract, service, cooperative agreement, or other assignment for the Access Board when necessary to accomplish an agency function. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Access Board employees.

9. Records Management – To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

10. Gathering Information – To any source from which information is requested in the course of processing a grievance, investigation, arbitration, or other litigation, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

11. Disclosure to a Federal Agency – To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

12. Assistance to Federal Agencies and Entities – To another Federal agency or Federal entity, when the Access Board determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

13. Medical Providers – To physicians or other medical professionals to provide them with, or obtain from them, the necessary medical documentation and/or certification for reasonable accommodations.

14. Decisions Concerning Reasonable Accommodation – A record in this system of records may be disclosed, but only to the extent necessary, to individuals involved in processing a request for reasonable accommodation or in providing any accommodation granted, including medical professionals; agency counsel; individuals consulted outside of the Access Board, such as employees of the Equal Employment Opportunity Commission or other federal agencies concerning the Access Board’s legal obligations; and vendors of assistive technology or other devices needed as accommodations.

15. Alternative Dispute Resolution – To appropriate third-parties contracted by the Access Board to facilitate mediation or other alternative dispute resolution procedures or programs.

16. Medical Emergency – To medical personnel to meet a bona fide medical emergency.

## **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records in this system consist of electronic and/or hard-copy (paper) records. Paper files are maintained in locked file cabinets. Electronic records are maintained in restricted access folders on the Access Board’s internal, cloud-based General Support System (GSS), which is Fed-RAMP compliant. Access is limited to the system owner(s) and other agency personnel who have an official need for access to perform their duties (e.g., IT administrators, agency litigation counsel). Access Board policy requires new employees to read and acknowledge the rules of behavior applicable to all agency information technology systems (including appropriate protection and handling of



personally identifiable information) before getting access to these systems and complete annual cybersecurity awareness training.

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records are retrievable by a variety of fields including, but not limited to, the individual's name, date of request, and nature of accommodation request. Records are typically retrieved by requester name.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Electronic and paper records are retained in accordance with the National Archives and Records Administration (NARA)'s General Records Schedule 2.3, Employee Relations Records, Item ## 020 (administrative program files) and 021 (employee case files), which prescribes a three-year retention period. For administrative program files, the retention period dates from file supersession. For employee case files the retention period dates from either employee separation from the agency or conclusion of any appeals, whichever is later. When eligible for destruction, electronic records are securely destroyed or erased using methods prescribed by the National Institute of Standards and Technology. Hard-copy records are permanently destroyed by shredding or burning.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Access to system records is restricted to authorized Access Board personnel who are system owners or have an official need to access such records to perform their duties. Electronic records are stored in restricted-access folders on the Access Board's internal, cloud-based GSS. Access to electronic records is controlled by technical safeguards through assignment of system roles and permissions, secure log-ins, time-out features,

firewalls, and cybersecurity monitoring systems. Access Board policy also requires all emails, email strings, and attachments that contain sensitive personally identifiable information to be protected by encryption or password protection before transmission, absent express waiver from an agency privacy officer. Paper records are maintained in locked file cabinets with access limited to those personnel whose official duties require access. When paper records containing personally identifiable information are photocopied, faxed, or scanned, care is taken to ensure that no copies are left unattended where they could be viewed by unauthorized individuals.

#### **RECORD ACCESS PROCEDURES:**

Individuals seeking access to, or notification of, any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in the Access Board's Privacy Act Implementation rule, 36 CFR part 1121, which also appear on the Access Board's website at [www.access-board.gov/privacy](http://www.access-board.gov/privacy).

#### **CONTESTING RECORD PROCEDURES:**

See "Record Access Procedures," above.

#### **NOTIFICATION PROCEDURE:**

See "Record Access Procedures," above.

#### **EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

#### **HISTORY:**

None.

Gretchen Jacobs,

*General Counsel.*

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